

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Engineering Division

March 28, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Authorization to Enter Into a *Cooperative Agreement-Locally Led Contracting* Between the State of Hawaii, Department of Land and Natural Resources and the United States Department of Agriculture, Natural Resources Conservation Service Regarding the Makaua Stream Restoration and Debris Removal Project

The Engineering Division, on behalf of the Department of Land and Natural Resources (DLNR), desires to enter into a *Cooperative Agreement-Locally Led Contracting* (Agreement) with the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) to participate in the Makaua Stream Restoration and Debris Removal Project (Project).

BACKGROUND:

Under the provisions of Section 216 of Public Law 81-516, Emergency Watershed Protection Program and Title IV of the Agricultural Credit Act of 1978, Public Law 95-334, NRCS is authorized to assist the State of Hawaii DLNR in relieving hazards created by natural disasters that cause a sudden impairment of a watershed and to install emergency watershed protection measures to relieve hazards and damages created by the flood of March 2006.

The Project consists of debris clearing in the streambed and stabilization of four (4) heavily eroded areas of the streambank through the construction of walls.

NRCS will contribute \$1,000,000 which may not exceed 75% of the construction cost of the Project. The remaining balance will be paid by DLNR through cash or in-kind contributions. In-kind contributions could include costs associated with site investigations, topographic surveys, administering contracts and inspecting construction work and will not exceed 25 percent of the actual cost of constructing the Project.

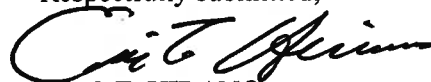
The objective of the Agreement is to establish a partnership framework that fosters cooperation and collaboration between NRCS and DLNR and defines the roles and responsibilities of both agencies.

A copy of the draft Agreement is attached.

RECOMMENDATION:

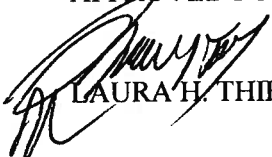
That the Board of Land and Natural Resources authorize the Chairperson to sign the Agreement and other necessary documents pertaining to the project, subject to the Deputy Attorney General's approval as to form.

Respectfully submitted,


ERIC T. HIRANO
Chief Engineer

Attachments

APPROVED FOR SUBMITTAL:


LAURA H. THIELEN, Chairperson

STATE Hawaii
PROJECT Makaua Stream
Restoration and
Debris Removal,
Kaaawa, Oahu, Hawaii
AGREEMENT NO. _____

**UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE**

COOPERATIVE AGREEMENT
LOCALLY LED CONTRACTING

THIS AGREEMENT, made this _____ day of _____, 200_, by and between the State of Hawaii, Department of Land and Natural Resources, hereinafter called the Sponsor; and the Natural Resources Conservation Service, United States Department of Agriculture, hereinafter called NRCS.

WITNESSETH THAT:

WHEREAS, under the provisions of Section 216 of Public Law 81-516, Emergency Watershed Protection Program, and Title IV of the Agricultural Credit Act of 1978, Public Law 95-334, NRCS is authorized to assist the Sponsor in relieving hazards created by natural disasters that cause a sudden impairment of a watershed, and

WHEREAS, NRCS and the Sponsor agree to install emergency watershed protection measures to relieve hazards and damages created by the flood of March 2006,

NOW, THEREFORE, in consideration of the premises and of the several promises to be faithfully performed by the parties hereto as set forth, the Sponsor and NRCS do hereby agree as follows:

- A. It is agreed that the following-described work is to be installed at an estimated cost of \$1,000,000.

<u>DSR No.</u>	<u>Description of Work</u>	<u>Estimated Cost</u>
AIEA-2006-01	Makaua Stream Restoration, Kaaawa, Ohau, Hawaii	\$1,000,000

- B. The Sponsor will:

1. Provide in-kind contribution (i.e., site investigation, topographic survey, let and administer contract(s), and inspect work performed). The maximum

value of in-kind contribution will not exceed 25 percent of the actual cost of installing the emergency watershed protection measure described in Section A. The value of the in-kind contribution is estimated to be \$250,000. The Sponsor will retain records to support costs incurred by the Sponsor equal to the amount of the in-kind contribution.

2. The following individual is designated as the liaison between the Sponsor and NRCS.

Carty Chang, Planning Branch Chief
Engineering Division
Department of Land and Natural Resources
State of Hawaii
1151 Punchbowl Street, Room 221
Honolulu, Hawaii 96813
TEL: (808) 587-0227
FAX: (808) 587-0283
E-MAIL: carty.s.chang@hawaii.gov

3. Review and sign the construction plans for installing the emergency watershed protection measure described in Section A.
4. Provide certification that real property rights have been obtained for installation of the emergency watershed protection measure prior to advertising. Certification will be provided on Form NRCS-ADS-78, Assurances Relating to Real Property Acquisition, as amended.
5. Accept all financial and other responsibility for excess costs resulting from their failure to obtain, or their delay in obtaining, adequate land and water rights, permits, and licenses needed for the emergency watershed protection measure described in Section A.
6. Contract for installation of the emergency watershed protection measure described in Section A. in accordance with applicable City and County of Honolulu and State of Hawaii requirements.
7. Comply with the applicable requirements in Attachments A and B to this agreement.
8. Ensure that all contracts for installation of the emergency watershed protection measure include the provisions contained in Attachment B to this agreement.
9. Provide copies of site maps to appropriate Federal and State agencies for environmental review. Sponsor will notify NRCS of environmental clearance, modification of construction plans, or any unresolved concerns prior to award of the contract(s) for installation of the emergency watershed protection measure.

10. Ensure that requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.
11. Pay the contractor as provided in the contract(s). Submit billings for reimbursement to NRCS on Form SF-270, Request for Advance or Reimbursement.
12. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the contract(s) awarded under this agreement. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, and litigation that may result from the construction contract. Such actions will be at the expense of the Sponsor including legal expenses.
13. Arrange for and conduct final inspection of completed emergency watershed protection measure. Certify that the project was installed in accordance with contractual requirements.
14. Upon acceptance of the work from the contractor(s), assume responsibility for operation and maintenance.
15. Hold and save NRCS free from any and all claims or causes of action whatsoever resulting from the obligations undertaken by the Sponsor under this agreement or resulting from the work provided for in this agreement.
16. Retain all records dealing with the award and administration of contract(s) for 3 years from the date of the Sponsor's submission of the FINAL Request for Reimbursement or until final audit findings have been resolved, whichever is longer. If any litigation is started before the expiration of the 3-year period, the records are to be retained until the litigation is resolved or the end of the 3-year period, whichever is longer. Make such records available to the Comptroller General of the United States or his or her duly authorized representative and accredited representatives of the U.S. Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcripts.

C. NRCS will:

1. Provide 100 percent of the cost for installing the emergency watershed protection measure described in Section A. This cost to NRCS is estimated to be \$1,000,000.
2. Credit the Sponsor for in-kind contributions, not to exceed 25 percent of the actual cost of installing the emergency watershed protection measure described in Section A.

3. Not be substantially involved with contractual administration of this agreement. However, NRCS will provide advice and counsel as needed.
4. Provide authorized technical services, including but not limited to obtaining basic information; and preparation of drawings, designs, and specifications.
5. Make payment to the Sponsor covering NRCS' share of the cost upon receipt and approval of Form SF-270, Request for Advance or Reimbursement.
6. Be available to conduct progress checks and participate in final inspections.
7. The following individual is designated as the liaison between the Sponsor and NRCS.

Michael Hayama, Civil Engineer
USDA, Natural Resources Conservation Service
300 Ala Moana Blvd., Room 4-118
Honolulu, Hawaii 96850
TEL: (808) 541-2600 ext. 123
FAX: (808) 541-1335
E-MAIL: michael.hayama@hi.usda.gov

D. It is mutually agreed that:

1. This agreement is effective the date it is fully executed by all parties to this agreement. It shall become null and void 90 calendar days after the date NRCS has executed this agreement if a construction contract has not been awarded.
2. The furnishing of financial and other assistance by NRCS is contingent upon the continuing availability of appropriations by Congress from which payment may be made and shall not obligate NRCS if Congress fails to so appropriate.
3. The contract for performing the work described in Section A will not be awarded to the Sponsor, or to any firm in which any Sponsor official or any member of such official's immediate family has direct or indirect interest in the pecuniary profits or contracts of such firms.
4. This agreement may be temporarily suspended by NRCS if NRCS determines that corrective action by the Sponsor is needed to meet the provisions of this agreement. Further, NRCS may suspend this agreement when it is evident that a termination is pending.
5. NRCS may terminate this agreement in whole or in part if it is determined by NRCS that the Sponsor has failed to comply with any of the conditions of this agreement. NRCS shall promptly notify the Sponsor in writing of the determination and reasons for the termination, together with the effective

date. Payments made by or recoveries made by NRCS under this termination shall be in accord with the legal rights and liabilities of NRCS and the Sponsor.

6. This agreement may be renegotiated, amended, extended, or modified by written amendment as mutually agreed by both parties.
7. By signing this agreement, the Sponsor assures the U.S. Department of Agriculture that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.
8. The Sponsor may delegate certain responsibilities under this Agreement to the landowner of the real property in question (hereinafter called the Owner), consistent with the terms of any separate agreement that may be entered into between the Sponsor and the Owner.

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

By: _____

LAURA H. THIELEN

Title: _____
Chairperson

Date: _____

UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

By: _____

LAWRENCE T. YAMAMOTO

Title: _____
Director of Pacific Islands Area

Date: _____

ATTACHMENT A - SPECIAL PROVISIONS

The Sponsor agrees to comply with the following special provisions which are hereby attached to this agreement.

I. Drug-Free Workplace.

By signing this agreement, the Sponsor is providing the certification set out below. If it is later determined that the Sponsor knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the NRCS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacturing, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirements; consultants or independent contractors not on the grantees' payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification:

A. The Sponsor certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about --

- (1) The danger of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph 9a) that, as a condition of employment under the grant, the employee will --

- (1) Abide by the terms of the statement; and
- (2) Notifying the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such a conviction;

(e) Notifying NRCS in writing, within ten calendar days after receiving notice under paragraph 9(d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted --

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(h) Agencies shall keep the original of all disclosure reports in the official files of the agency.

B. The Sponsor may provide a list of the site(s) for the performance of work done in connection with a specific project or other agreement.

II. Certification Regarding Lobbying (7 CFR 3018) (Applicable if this agreement exceeds \$100,000)

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sponsor, to any person for influencing or attempting to influence an officer or employee of an agency, Member of Congress, and officer or employer of Congress, or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The Sponsor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

III. Certification Regarding Debarment, Suspension, and Other Responsibility matters - Primary Covered Transactions, (7 CFR 3017)

(1) The Sponsor certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery,

bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal has one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the primary Sponsor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.

IV. Clean Air and Water Certification (Applicable if this agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt.)

The Sponsor signatory to this agreement certifies as follows:

(a) Any facility to be utilized in the performance of this proposed agreement is _____, is not _____, listed on the Environmental Protection Agency List of Violating Facilities.

(b) To promptly notify the State or Regional Conservationist prior to the signing of this agreement by NRCS, of the receipt of any communication from the Director, Office of Federal Activities, U. S. Environmental Protection Agency, indicating that any facility which he/she proposes to use for the performance of the agreement is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.

(c) To include substantially this certification, including this subparagraph (c), in every nonexempt subagreement.

Clean Air and Water Clause

(Applicable only if the agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA or the agreement is not otherwise exempt.)

A. The Sponsor agrees as follows:

(1) To comply with all the requirements of section 114 of the Clean Air Act as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et. sq., as amended by Public Law

92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the signing of this agreement by NRCS.

(2) That no portion of the work required by this agreement will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this agreement was signed by NRCS unless and until the EPA eliminates the name of such facility or facilities from such listing.

(3) To use their best efforts to comply with clean air standards and clean water standards at the facilities in which the agreement is being performed.

(4) To insert the substance of the provisions of this clause in any nonexempt subagreement, including this subparagraph A. (4).

B. The terms used in this clause have the following meanings:

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

(2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-55).

(3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), and approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standards, or other requirement which is promulgated pursuant to the Water Act or contained a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (3 U.S.C. 1317).

(5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with the scheduled or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or any air or water pollution control issued pursuant thereto.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations, owned leased, or supervised by a sponsor, to be utilized in the performance of an agreement or subagreement. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collated in one geographical area.

V. Assurances and Compliance

As a condition of the grant or cooperative agreement, the recipient assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in 7 CFR 3015, 3016, 3017, 3018, 3019, 3051 and 3052 which hereby are incorporated in this agreement by reference, and such other statutory provisions as are specifically set forth herein.

VI. Examination of Records

Give the NRCS or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this agreement. Retain all records related to this agreement for a period of three years after completion of the terms of this agreement in accordance with the applicable OMB Circular.

ATTACHMENT B - SPECIAL PROVISIONS

CONSTRUCTION

EQUAL OPPORTUNITY

The Contracting Local Organization agrees to incorporate, or cause to be incorporated, into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is paid for, in whole or in part, with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following Equal Opportunity (Federally Assisted Construction) clause:

EQUAL OPPORTUNITY (FEDERALLY ASSISTED CONSTRUCTION)

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity (Federally Assisted Construction) clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers, with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records,

and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor's noncompliance with the Equal Opportunity (Federally Assisted Construction) clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.
7. The Contractor will include this Equal Opportunity (Federally Assisted Construction) clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Contracting Local Organization further agrees that it will be bound by the above Equal Opportunity (Federally Assisted Construction) clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, however, that if the Contracting Local Organization so participating is a State or local government, the above Equal Opportunity (Federally Assisted Construction) clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Contracting Local Organization agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the Equal Opportunity (Federally Assisted Construction) clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contracting Local Organization further agrees that it will refrain from entering into any contractor contract modification subject to Executive Order No. 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity (Federally Assisted Construction) clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, the Contracting Local Organization agrees that if it fails or refuses to comply with these undertakings the administering agency may take any or all of the following actions: Cancel, terminate, or suspend, in whole or in part, this grant; refrain from extending any further assistance to the Contracting Local Organization under the program with respect to which its failure or refusal occurred until satisfactory

assurance of future compliance has been received from such Contracting Local Organization; and refer the case to the Department of Justice for appropriate legal proceedings.

**NOTICE TO CONTRACTING LOCAL ORGANIZATIONS OF REQUIREMENT FOR
CERTIFICATIONS OF NONSEGREGATED FACILITIES**

- (a) A Certification of Nonsegregated Facilities must be submitted by the Contracting Local Organization prior to any agreement for Federal financial assistance where the Contracting Local Organization will itself perform a federally assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.
- (b) The Contracting Local Organization shall notify prospective federally assisted construction contractors of the Certification of Nonsegregated Facilities required, as follows:

NOTICE TO PROSPECTIVE FEDERALLY ASSISTED CONSTRUCTION CONTRACTORS

- (a) A Certification of Nonsegregated Facilities must be submitted prior to the award of a federally assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.
- (b) Contractors receiving federally assisted construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
CERTIFICATIONS OF NONSEGREGATED FACILITIES**

- (a) A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.
- (b) Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.